

STATE OF MICHIGAN
COURT OF APPEALS

In re L. M. DOSS, Minor.

UNPUBLISHED
February 16, 2016

No. 328241
Wayne Circuit Court
Family Division
LC No. 14-518092-NA

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Before: GLEICHER, P.J., and JANSEN and SHAPIRO, JJ.

PER CURIAM.

Respondents appeal as of right the trial court order terminating their parental rights to the minor child under MCL 712A.19b(3)(b)(i) (child suffered abuse and there is a reasonable likelihood the child will be abused in the future), (b)(ii) (parent had the opportunity to prevent physical injury or abuse and failed to do so), (g) (parent failed to provide proper care and custody), (j) (reasonable likelihood of harm if child is returned to parent's home), and (k)(iii) (parent abused child and abuse included battery, torture, or other severe physical abuse). We affirm.

I. FACTUAL BACKGROUND

Respondents' infant child was removed from their home after she was treated at a hospital for severe, life-threatening injuries. Doctors determined that the baby had sustained multiple rib fractures, severe brain and eye hemorrhaging, and eyelid bruising. The child needed to be placed on life support upon arrival at the hospital and had two holes drilled in her skull in order to drain blood and save her life. The pediatric child abuse physician that examined her determined that the injuries were not accidental. The rib fractures were in various stages of healing, which indicated that there was more than one incident of abuse. No plausible explanation was given for the child's injuries. Respondents entered a no contest plea to the statutory grounds in MCL 712A.19b(3)(b)(i), (b)(ii), (g), (j), and (k)(iii), and admitted that they were the child's sole caregivers. The court determined by clear and convincing evidence that the

parental rights of each respondent would be terminated under the same statutory grounds. The court also found that termination of respondents' parental rights was in the child's best interests. Respondents now appeal.

II. STATUTORY GROUNDS

On appeal, respondent-father argues that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence. We disagree.

The petitioner must prove the existence of at least one statutory ground for termination by clear and convincing evidence. *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). "This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination." *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). "The trial court's factual findings are clearly erroneous if the evidence supports them, but we are definitely and firmly convinced that it made a mistake." *Id.* at 709-710.

Respondents pleaded no contest to the statutory grounds under MCL 712A.19b(3)(b)(i), (b)(ii), (g), (j), and (k)(iii), and admitted to being the child's sole caretakers. Neither respondent claims that there was any irregularity with regard to the pleas. Thus, the argument that there was no clear and convincing evidence to support termination is contrary to the no contest pleas. "Respondent may not assign as error on appeal something that [he] deemed proper in the lower court because allowing [him] to do so would permit respondent to harbor error as an appellate parachute." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). Regardless, there was clear and convincing evidence to terminate respondents' parental rights under the specified statutory grounds.

Respondents' parental rights were terminated under the following subsections of MCL 712A.19b:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

* * *

(iii) Battering, torture, or other severe physical abuse.

Although respondent-mother does not contest the statutory grounds on which the trial court terminated her parental rights, respondent-father does. Regardless, in this case the trial court properly terminated both respondents' parental rights under MCL 712A.19b(3)(b)(i), (b)(ii), (g), (j), and (k)(iii). This Court has held that "termination of parental rights under MCL 712A.19b(3)(b)(i), (b)(ii), (j), and (k)(iii) is permissible even in the absence of definitive evidence regarding the identity of the perpetrator when the evidence does show that the respondent or respondents must have either caused or failed to prevent the child's injuries." *In re Ellis*, 294 Mich App 30, 35-36; 817 NW2d 111 (2011). In *Ellis*, this Court relied on the fact that the minor had "suffered numerous nonaccidental injuries that likely occurred on more than one occasion and that the parents lived together, shared childcare responsibilities, and were the child's sole caregivers." *Id.* at 36. Likewise in this case, the minor child was not quite seven months old when she was taken to the hospital with life-threatening injuries. Respondents admitted to being the child's sole caregivers. The child's treating physician testified that the child's injuries were caused by nonaccidental trauma and that it was evident from the various healing stages of her rib fractures that the injuries occurred in multiple episodes. Neither parent could explain her injuries. As in *Ellis*, the child was in the custody of both parents when she suffered this horrific abuse, with both parents failing to prevent her injuries. See *id.* Further, the medical evidence established that the child's injuries were the result of severe physical abuse, and they were life threatening.

In *In re VanDalen*, 293 Mich App 120, 139-141; 809 NW2d 412 (2011), this Court applied MCL 712A.19b(3)(g) and (j) under similar circumstances, as the children in that case "suffered unexplained, serious, nonaccidental injuries consistent with intentional abuse while in [the] respondents' sole care and custody." The respondents in that case lived together with the children and shared responsibility for their care. *Id.* at 140. They provided no plausible explanations for all of the children's injuries. *Id.* This Court explained that, "[a]lthough the record contains no direct evidence implicating either respondent in the abuse, the extent and seriousness of the injuries to both children were consistent with prolonged abuse and clearly demonstrated a pattern of abuse in respondents' home indicating a substantial risk of future

harm.” *Id.* This Court concluded that “termination of parental rights under MCL 712A.19b(3)(j) and MCL 712A.19b(3)(g) is permissible even in the absence of determinative evidence regarding the identity of the perpetrator when the evidence shows that the respondents must have either caused the intentional injuries or failed to safeguard the children from injury.” *Id.* at 141.

Likewise in this case, the evidence showed that the minor child suffered unexplained, life-threatening, nonaccidental injuries while in the sole care and custody of her parents. The child sustained brain and eye hemorrhages, eyelid bruising, and multiple rib fractures that were in various stages of healing, indicating that the harm was sustained over time and in multiple episodes. While it is unclear which respondent caused the child’s injuries, it is clear that both failed to safeguard her from abuse, and there was a substantial risk of future harm. Accordingly, the trial court did not clearly err in terminating respondents’ parental rights pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (g), (j), and (k)(iii). See *In re Ellis*, 294 Mich App at 35-36; *In re VanDalen*, 293 Mich App at 139-141.

Finally, respondent-father argues that reasonable efforts to reunify the child with him were not made. Contrary to respondent-father’s claim, MCL 712A.19a(2)(a) allows the trial court to find that reasonable efforts to reunite the family are not required where “[t]here is a judicial determination that the parent has subjected the child to aggravated circumstances” Those aggravated circumstances include “[b]attering, torture, or other severe physical abuse” as set forth in MCL 722.638(1)(a)(iii). Here, the trial court found clear and convincing evidence to terminate respondents’ parental rights under MCL 712A.19b(3)(k)(iii), which provides that the parent abused the child or a sibling of the child and the abuse included “[b]attering, torture, or other severe physical abuse.” Additionally, “the petitioner ‘is not required to provide reunification services when termination of parental rights is the agency’s goal.’ ” *In re Moss*, 301 Mich App at 91 (citation omitted). Termination of parental rights was petitioner’s goal in this case. Therefore, reunification efforts were not required. See *id.*

III. BEST INTERESTS

On appeal, both respondents claim that the trial court erred in its best-interest determination. We disagree.

We review for clear error the trial court’s best-interest determination. *In re White*, 303 Mich App at 713. “The trial court must order the parent’s rights terminated if the Department has established a statutory ground for termination by clear and convincing evidence and it finds from a preponderance of the evidence on the whole record that termination is in the [child’s] best interests.” *Id.* The trial court must weigh the available evidence in the case in order to determine whether termination is in the child’s best interests. *Id.* “To determine whether termination of parental rights is in a child’s best interests, the court should consider a wide variety of factors that may include ‘the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home.’ ” *Id.* (citation omitted). Other factors that the trial court may consider include “a parent’s history of domestic violence, the parent’s compliance with his or her case service plan, the parent’s visitation history with the child, the [child’s] well-being while in care, and the possibility of adoption.” *Id.* at 714.

As the trial court properly found, termination of both respondents' parental rights was in the child's best interests. In the instant matter, the not quite seven-month-old child sustained severe, life-threatening injuries while living with respondents. The evidence also suggested there were multiple incidents of abuse. As the trial court opined, the child was abused by the people who were charged with protecting her. The court would not sacrifice the safety of the child to give the parents a chance to hurt their child again. And, although respondents both claim they were bonded to the child and appropriate with her, any bond they had with the child was not more important than the child's safety and well-being. Thus, the trial court did not clearly err with regard to its best-interest determination. See *In re White*, 303 Mich App at 713-714.

Respondents both argue that the court should have considered the child's placement with a relative, which weighs against termination of parental rights. This Court has held that "the fact that a child is living with relatives when the case proceeds to termination is a factor to be considered in determining whether termination is in the child's best interests." *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012).

Although the trial court may terminate parental rights in lieu of placement with relatives if it finds that termination is in the child's best interests, the fact that the [child is] in the care of a relative at the time of the termination hearing is an "explicit factor to consider in determining whether termination was in the [child's] best interests." [*Id.* (citations omitted).]

"A trial court's failure to explicitly address whether termination is appropriate in light of the [child's] placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal" *Id.*

Contrary to respondents' claim, the trial court did specifically consider the relative placement. In its oral findings, the trial court acknowledged that the child was placed with the maternal grandmother and that a child's placement with relatives must be considered and weighed against termination. The trial noted that relative placement did not change the court's belief that termination of parental rights was in the child's best interests because the child would be at risk for future abuse and or neglect if termination did not occur, and neither parent could provide a stable environment for the child. The trial court made similar findings in its order terminating parental rights. Thus, the trial court did not err in its best-interest determination. See *Olive/Metts*, 297 Mich App at 43.

The trial court did not clearly err in finding that clear and convincing evidence established MCL 712A.19b(3)(b)(i), (b)(ii), (g), (j), and (k)(iii), and that termination of respondents' parental rights was in the child's best interests.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Kathleen Jansen
/s/ Douglas B. Shapiro